

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES B. TURNER, et al.,

Plaintiffs,

v.

LOCKHEED SHIPBUILDING
COMPANY, et al.,

Defendants.

C13-1747 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The motion for summary judgment brought by defendant ON Marine Services Company, LLC, Ferro Engineering Division, a wholly owned subsidiary of Oglebay Norton Company, LLC (“ON Marine”), docket no. 84, is GRANTED in part and DENIED in part as follows:

(a) With regard to plaintiffs’ claims for conspiracy, spoliation, willful or wanton misconduct, breach of warranty, and market-share liability, ON Marine’s unopposed motion for summary judgment is GRANTED, and such claims are DISMISSED with prejudice;

(b) ON Marine’s motion for summary judgment is otherwise DENIED. Genuine disputes of material fact exist and preclude summary judgment. Fed. R. Civ. P. 56(a).

(2) ON Marine’s motions in limine, docket no. 114, are GRANTED in part, DENIED in part, and DEFERRED in part as follows:

(1) Compliance with Protective Order - GRANTED

This motion is unopposed. Pursuant to the Minute Order entered on October 31, 2013, docket no. 81, any inconsistency between ON Marine’s Rule 30(b)(6) deponent’s testimony and the previous testimony of William Gabriel and/or James

1 Bogнар may not be used for any reason. Moreover, to the extent ON Marine's
2 Rule 30(b)(6) witness did not recall specific information during the course of the
3 deposition, but such information is contained in prior deposition transcripts or
4 other documents produced to plaintiffs by ON Marine, such lack of memory may
5 not be imputed to ON Marine.

6 (2) Financial Status of ON Marine - GRANTED

7 This motion is unopposed. No witness or attorney shall mention any party's
8 financial status.

9 (3) "Sending a Message" Arguments - GRANTED

10 This motion is unopposed. Counsel shall refrain from making arguments that
11 appeal to passion or prejudice. *See* RCW 4.76.030.

12 (4) Witness's Asbestos Injury or Lawsuit - GRANTED

13 Plaintiffs shall not offer evidence or otherwise mention that a witness, other than
14 plaintiff James B. Turner, has a pending lawsuit or previously litigated about
15 asbestos-related injuries or that a witness, other than plaintiff James B. Turner,
16 reached a settlement with or obtained a judgment against any entity in connection
17 with asbestos-related injuries. Plaintiffs shall not elicit from a witness, other than
18 plaintiff James B. Turner, testimony concerning the cause of such witness's illness
19 or injury, if any.

20 (5) Asbestos Awards or Standards - GRANTED in part and
21 DEFERRED in part to trial

22 No witness or attorney shall mention settlements, verdicts, or judgments in other
23 cases involving asbestos-related injuries; no witness or attorney shall mention the
costs incurred to litigate this case or the manner in which counsel will or might be
compensated. The Court will rule on any objections relating to specific arguments
or testimony concerning the status of asbestos and the standards relating thereto
when they are raised during trial.

(6) Characterizing ON Marine as "Asbestos Company" - GRANTED in
part and DENIED in part

ON Marine may be described as a manufacturer and/or distributor of asbestos-
containing products or in similar fashion, but witnesses and counsel shall avoid
phrases that attempt to impute to ON Marine actions or behavior of others in the
"asbestos industry" or that otherwise appeal to passion or prejudice.

1 (7) Disparaging Remarks - GRANTED

2 This motion is unopposed. Counsel shall refrain from using derogatory terms and
3 labels.

4 (8) Health Conditions of Family Members - GRANTED in part and
5 DENIED in part

6 No witness or attorney shall mention the health condition of plaintiffs' children,
7 Jonathan and Taylor Turner-Lipson, who are not parties to this action, and who
8 have made no claim for loss of consortium. The motion is denied as to plaintiff
9 Joanne Lipson's health condition, which is relevant to her claim for loss of
10 consortium.

11 (9) Newspaper or Magazine Articles - DEFERRED to trial

12 Newspaper or magazine articles will not be admitted at trial unless they are
13 relevant, more probative than prejudicial, and satisfy an exception to the rule
14 prohibiting hearsay. The Court will rule on any objections to specific offers of
15 newspaper or magazine articles when they are raised during trial.

16 (10) "Missing" Witness - GRANTED

17 This motion is unopposed. No comment shall be made about the failure to call a
18 witness without advance permission of the Court, which shall be sought outside
19 the presence of the jury.

20 (11) Exclude Witnesses From Courtroom - GRANTED in part,
21 DENIED in part, and DEFERRED in part

22 All non-party witnesses are excluded from the courtroom except when they are
23 testifying, except that (i) plaintiffs' children, Taylor and Jonathan Turner-Lipson,
24 may attend all proceedings, and (ii) each defendant may designate one corporate
25 representative who may attend all proceedings. Fed. R. Evid. 615. The Court
26 defers ruling on whether and to what extent expert witnesses will be permitted to
27 attend proceedings.

28 (12) Advance Notice of Witnesses - GRANTED as follows

29 At the end of each trial day, counsel shall exchange a list of witnesses they
30 anticipate calling on the next trial day.

1 (13) Extra-Pleading Matters - GRANTED

2 This motion is unopposed. No new claims, defenses, or legal theories shall be
3 introduced at trial.

4 (14) “Ban” on Asbestos - DEFERRED

5 (15) Cumulative Asbestos Exposure - STRICKEN as moot

6 ON Marine’s motion to exclude testimony that “every contribution to the lifetime
7 cumulative asbestos dose is causative” is moot because plaintiffs agree that their
8 expert, Carl Andrew Brodtkin, M.D., will not present such testimony. The Court
9 will instruct the jury on the appropriate standard of causation under Washington
10 law. *See Lockwood v. AC&S, Inc.*, 109 Wn.2d 235, 744 P.2d 605 (1987).

11 (16) Testimony of Carl A. Brodtkin, M.D. - DEFERRED

12 (17) Testimony of Susan Raterman - DEFERRED

13 (18) Videos Using Tyndall Lighting - DEFERRED

14 (19) Scope of Expert Testimony - GRANTED as follows

15 An expert’s trial testimony shall be limited to the testimony provided during
16 such expert’s deposition and/or to such expert’s report, if any, disclosed prior to
17 November 7, 2013.

18 (3) Counsel shall be prepared to address the deferred motions in limine, namely
19 Nos. 11, 14, and 16-18, at the Pretrial Conference scheduled for November 26, 2013, at
20 10:00 a.m.

21 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
22 record.

23 Dated this 22nd day of November, 2013.

William M. McCool
Clerk

s/Claudia Hawney
Deputy Clerk